

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

BRIAN ANDREW TAPIA,

Plaintiff,

v.

RALPH DIAZ, et al.,

Defendants.

No. 1:20-cv-01790-NONE-EPG (PC)

ORDER ADOPTING FINDINGS AND  
RECOMMENDATIONS

(Doc. Nos. 1, 12)

Brian Tapia (“plaintiff”) is a state prisoner proceeding *pro se* and *in forma pauperis* in this civil rights action filed pursuant to 42 U.S.C. § 1983, and which includes state law claims. The matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

On March 11, 2021, the assigned magistrate judge screened plaintiff’s complaint and issued findings and recommendations, recommending that “[t]his case proceed on Plaintiff’s Eighth Amendment failure to protect claim against defendants Smith and Curtice,” and that “[a]ll other claims and defendants be dismissed.” (Doc. No. 12 at 13.)

Plaintiff was provided an opportunity to file objections to the findings and recommendations. The deadline for filing objections has passed and plaintiff has not filed objections to the findings and recommendations. However, on March 24, 2021, plaintiff did lodge an amended complaint. (Doc. No. 15.)

1 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C) and Local Rule 304, this  
2 court has conducted a *de novo* review of this case. Having carefully reviewed the entire file, the  
3 court finds the findings and recommendations to be supported by the record and proper analysis.

4 Plaintiff's lodged amended complaint does not change the analysis set forth in the pending  
5 findings and recommendations. Plaintiff was already given leave to amend, (Doc. No. 9), but  
6 chose to stand on his current complaint, (Doc. No. 10.) While Plaintiff later filed an amended  
7 complaint, he did not seek leave to amend, and the court would not have granted further leave to  
8 amend even if he had. The court has reviewed plaintiff's lodged amended complaint, and it is  
9 largely identical to the original complaint screened by the magistrate judge. Plaintiff's proposed  
10 amended complaint does not address or cure any of the defects identified in the pending findings  
11 and recommendations or change the analysis set forth in those findings and recommendations.  
12 Thus, granting further leave to amend would be futile in this case.

13 Accordingly,

- 14 1. The findings and recommendations issued on March 11, 2021, (Doc. No. 12), are  
15 adopted in full;
- 16 2. This case shall proceed on Plaintiff's Eighth Amendment failure to protect claim  
17 against defendants Smith and Curtice;
- 18 3. All other claims and defendants are dismissed;
- 19 4. The Clerk of Court is directed to reflect the dismissal of defendants Diaz and  
20 Fisher from this action on the Court's docket; and
- 21 5. This case is referred back to the magistrate judge for further proceedings.

22 IT IS SO ORDERED.

23 Dated: April 19, 2021

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UNITED STATES DISTRICT JUDGE